

HOUSE BILL NO. 141

INTRODUCED BY A. OLSON

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO UNIVERSAL SYSTEM BENEFITS PROGRAMS; REVISING THE UNIVERSAL SYSTEM BENEFITS PROGRAMS CHARGE AS IT RELATES TO COOPERATIVE UTILITIES AND PUBLIC UTILITIES; EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE THROUGH DECEMBER 31, 2009; INCREASING THE MINIMUM ANNUAL LOW-INCOME FUNDING REQUIREMENT FOR PUBLIC UTILITIES; ELIMINATING THE REQUIREMENT THAT UTILITIES REPORT TO THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE ON UNIVERSAL SYSTEM BENEFITS PROGRAMS; REQUIRING THAT THE DEPARTMENTS OF REVENUE, ENVIRONMENTAL QUALITY, AND PUBLIC HEALTH AND HUMAN SERVICES REPORT ANNUALLY TO THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE ON CREDITS AND EXPENDITURE OF MONEY FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS; PROHIBITING A UTILITY FROM CARRYING FORWARD NONCOMMITTED UNIVERSAL SYSTEM BENEFITS PROGRAM MONEY BEYOND JANUARY 15 FOR THE PREVIOUS CALENDAR YEAR; REQUIRING THE DEPARTMENT OF REVENUE TO ADOPT RULES THAT PROVIDE FOR UNIFORM REPORTING OF UNIVERSAL SYSTEM BENEFITS PROGRAM CREDITS; AMENDING SECTIONS 69-8-402, 69-8-412, 69-8-413, AND 69-8-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana ~~to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.~~

(2) Beginning January 1, 1999, through December 31, 2005, 2.4% of each cooperative and public utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an ~~annualized basis in 1999~~ annual basis, the commission shall establish rates for utilities subject to its jurisdiction

1 and the governing boards of cooperatives shall establish rates for the cooperatives.

2 (3) (a) Beginning January 1, 2006, 1.91% of each cooperative utility's annual retail sales revenue in
3 Montana for the prior calendar year is established as the initial funding level for universal system benefits
4 programs. To collect this amount of funds on an annual basis, the governing boards of cooperatives shall
5 establish rates for the cooperatives.

6 (b) Beginning January 1, 2006, 2.19% of each public utility's annual retail sales revenue in Montana for
7 the prior calendar year is established as the initial funding level for universal system benefits programs. To
8 collect this amount of funds on an annual basis, the commission shall establish rates for public utilities subject
9 to its jurisdiction.

10 (c) ~~These~~ The universal system benefits charge rates for cooperative and public utility customers in
11 subsections (3)(a) and (3)(b) must remain in effect through December 31, ~~2005~~ 2009.

12 (4) (a) The recovery of all universal system benefits programs costs imposed pursuant to this section
13 is authorized through the imposition of a universal system benefits charge assessed at the meter for each local
14 utility-system customer as provided in this section.

15 (b) A utility must receive credit toward annual funding requirements for the utility's internal programs
16 or activities that qualify as universal system benefits programs, including those amortized or nonamortized
17 portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy,
18 conservation-related activities, or low-income energy assistance, universal system benefits programs and for
19 large customers' programs or activities as provided in subsection ~~(7)~~ (9). The department of revenue shall review
20 claimed credits of the utilities and large customers pursuant to 69-8-414.

21 (c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility
22 that receives credit for the universal system benefits programs expenditure.

23 (d) A customer's distribution services provider shall collect universal system benefits funds less any
24 allowable credits.

25 (e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place
26 in Montana.

27 (f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding
28 provisions of subsection (2), ~~then or (3)~~, the utility shall make a payment to the universal system benefits fund
29 established in 69-8-412 for any difference.

30 ~~(3)(5)~~ Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding

requirements for universal system benefits programs and low-income energy assistance.

~~(4)(6)~~ A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

~~(5)(7)~~ (a) A public utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at ~~17%~~ 25% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) A cooperative utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the cooperative utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

~~(a)(c)~~ A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

~~(b)(d)~~ If a utility's credit for internal activities does not satisfy its annual funding requirement, ~~then~~ the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

~~(6)(8)~~ An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

~~(7)(9)~~ (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection ~~(7)~~ (9); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection ~~(7)~~ (9);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or

1 wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

2 (b) ~~Large customers~~ A large customer making these expenditures must receive a credit against the
3 large customer's universal system benefits charge, except that any of those amounts expended in a calendar
4 year that exceed that large customer's universal system benefits charge for the calendar year must be used as
5 a credit against those charges in future years until the total amount of those expenditures has been credited
6 against that large customer's universal system benefits charges.

7 ~~(8)(10)~~ A public utility shall prepare and submit an annual summary report of the public utility's activities
8 relating to all universal system benefits programs to the commission; and the department of revenue; ~~and the~~
9 ~~energy and telecommunications interim committee provided for in 5-5-230.~~ A cooperative utility shall prepare
10 and submit annual summary reports of activities to the cooperative utility's respective local governing body; and
11 the statewide cooperative utility office; ~~and the energy and telecommunications interim committee.~~ The statewide
12 cooperative utility office shall prepare and submit an annual summary report of the activities of individual
13 cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection ~~(3)~~ (5),
14 to the department of revenue ~~and the energy and telecommunications interim committee.~~ The annual report of
15 a public utility or of the statewide cooperative utility office must include but is not limited to:

16 (a) the types of internal utility and customer programs being used to satisfy the provisions of this
17 chapter;

18 (b) the level of funding for those programs relative to the annual funding requirements prescribed in
19 subsection (2) or (3); and

20 (c) any payments made to the statewide funds in the event that internal funding was below the
21 prescribed annual funding requirements.

22 (11) The department of revenue shall report to the energy and telecommunications interim committee
23 by May 1 of each year on universal system benefits programs activities and expenditures for the previous
24 calendar year. The report must describe:

25 (a) credits claimed for each type of universal system benefits program as defined in 69-8-103 and for
26 each public utility. Credits for cooperative utilities may be combined as provided in subsection (5) of this section.

27 (b) credits claimed by large customers by customer and by each type of universal system benefits
28 program as defined in 69-8-103;

29 (c) challenges to credits claimed since the previous annual report and the outcome of each challenge;
30 and

(d) any payments made by a utility to a universal system benefits program fund established pursuant to 69-8-412.

~~(9)(12)~~ A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

~~(10)(13)~~ (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection ~~(10)(b)~~ (13)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 2. Section 69-8-412, MCA, is amended to read:

"69-8-412. Funds established -- fund administrators designated -- purpose of funds -- department rulemaking authority to administer funds. (1) If, pursuant to ~~69-8-402(2)(f) or (5)(b)~~ 69-8-402(4)(f) or (7)(d), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or both of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services shall expend the money in each representative fund on universal system benefits programs in the utility service territory from which the money was received.

(4) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual assessment of identified funding needs in the utility service territory from which the money was received. In assessing the

1 funding needs, the departments shall solicit utility and public comment from the utility service territory from which
2 the money was received. The annual assessment must also take into account existing utility and large customer
3 universal system benefits programs expenditures.

4 (5) The department of environmental quality and the department of public health and human services
5 shall report to the energy and telecommunications interim committee by September 1 of each year on any
6 expenditure of money pursuant to this section."

7
8 **Section 3.** Section 69-8-413, MCA, is amended to read:

9 **"69-8-413. Department rulemaking authority.** (1) The department of revenue shall adopt rules ~~on or~~
10 ~~before September 1, 1999,~~ specifying acceptable universal system benefits programs credits and expenditures
11 and adopting procedures for challenged credits.

12 (2) Rules adopted pursuant to ~~this part~~ subsection (1) must be adopted in accordance with the Montana
13 Negotiated Rulemaking Act, Title 2, chapter 5, part 1.

14 (3) Universal system benefits programs credits claimed or expenditures made prior to the adoption of
15 the rules under subsection (1) must be allowed and are not subject to the requirements of 69-8-414. The
16 universal system benefits program credits must be claimed by January 15 each year for the previous calendar
17 year. A utility may not carry forward noncommitted universal system benefits program money beyond January
18 15 for the previous calendar year.

19 (4) The department of revenue shall adopt rules on or before December 1, 2005, that provide for
20 uniform reporting of universal system benefits programs credits by utilities and large customers."

21
22 **Section 4.** Section 69-8-414, MCA, is amended to read:

23 **"69-8-414. Universal system benefits programs credit review process.** (1) All annual reports
24 required of utilities and large customers pursuant to ~~69-8-402(8) and (10)~~ 69-8-402 must be filed with the
25 department of revenue on March 1 of each year.

26 (2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of
27 revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file
28 comments challenging the claim, including supporting documentation, with the department of revenue. A
29 challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit
30 claimant's annual reports required pursuant to ~~69-8-402(8) and (10)~~ 69-8-402.

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit."

1 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

2

3 NEW SECTION. **Section 6. Retroactive applicability.** [Section 1(7)(a)] applies retroactively, within
4 the meaning of 1-2-109, to January 1, 2005.

5 - END -